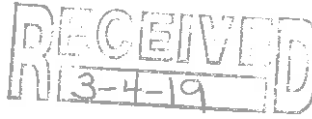


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February 28, 2019

VIA FEDEX

East Chicago Sanitation District Board of Commissioners
c/o Anthony DeBonis, Jr., Esq.
214 Main Street
Hobart, IN 46342

Re: Tenth Permit Appeal Supplement
Safety-Kleen Systems, Inc., Appellant

Dear Mr. DeBonis:

On behalf of Safety-Kleen Systems, Inc., Barnes & Thornburg LLP submits the enclosed Tenth Permit Appeal Supplement.

Please feel free to contact me at 574-237-1287 if you have any questions or concerns regarding this submittal.

Respectfully submitted,

BARNES & THORNBURG LLP

/s/ Joel T. Bowers
Attorney for Safety-Kleen

JTB:clu

Enclosure

cc: Mr. Abderrahman Zehraoui (w/enc.)
Ms. Nickie Geros (w/enc.)
Mr. Dennis Zawodni, Safety-Kleen Systems, Inc. (w/enc., via e-mail)
Mr. Erik White, Environ (w/enc., via e-mail)
Erika Powers, Esq., Barnes & Thornburg LLP (w/enc., via e-mail)


**BEFORE THE EAST CHICAGO SANITARY DISTRICT
BOARD OF COMMISSIONERS**

IN THE MATTER OF:)	
)	
SAFETY-KLEEN SYSTEMS, INC.,)	Wastewater Discharge
Appellant)	Permit Modification Appeal and Tenth
)	Appeal Supplement

NOW COMES Safety-Kleen Systems, Inc. ("Safety-Kleen") by its attorneys and pursuant to the ordinances of the East Chicago Sanitary District ("ECSD"), to appeal the modification of its Wastewater Discharge Permit for Outfall Number 901 dated November 15, 2018 and to supplement its pending appeal of (*inter alia*) the amenable cyanide discharge limit in the Wastewater Discharge Permit for Outfall Number 901 issued on August 4, 2008 (the "Original Permit"), revised on June 30, 2009, and perpetuated in the renewal permit No. 901 issued by ECSD on August 22, 2013 (the "Renewal Permit"). The Renewal Permit was modified by permit No. 901 issued by ECSD with an effective date of November 15, 2018 but received by Safety-Kleen on or around January 14, 2019 (the "Modified Permit"). In support of this Wastewater Permit Modification Appeal and Tenth Appeal Supplement, Safety-Kleen states as follows:


WHEREAS ECSD issued the Original Permit for Outfall Number 901 to the Safety-Kleen facility located at 601 Riley Road, East Chicago, IL on August 4, 2008 and revised that Permit on June 30, 2009 with respect to conditions which are not the subject of the underlying Permit Appeal or this Supplement. The Original Permit was replaced by the Renewal Permit on August 22, 2013. The Renewal Permit was replaced by the Modified Permit on November 15, 2018.

WHEREAS the Permit and the Renewal Permit included a discharge limit for amenable cyanide of 0.003 mg/L as a daily maximum based on composite sampling using EPA Test Method 4500-CN-G which Safety-Kleen appealed to ECSD in a timely manner on August 25, 2008 (the "Original Permit Appeal") and again in an appeal of the Renewal Permit on September 27, 2013 (the "Renewal Permit Appeal").

WHEREAS the Common Council of the City of East Chicago adopted Ordinance No. 18-0017 on November 14, 2018. Ordinance No. 18-0017, among other things, changed the local limit for amenable cyanide to 0.019 mg/L as a daily maximum. ECSD redeveloped its local limit following a Local Limit study, and, as with the previous local limit, ECSD applied the limit uniformly across all existing industrial users, regardless of the users' amenable cyanide contributions. 

WHEREAS the Modified Permit includes a discharge limit for amenable cyanide of 0.019 mg/L as a daily maximum based on composite sampling using EPA Test Method 4500-CN-G.

WHEREAS Safety-Kleen filed Permit Appeal Supplements in May 2012, October 2012, July 2013, August 2013, October 2014, November 2015, July 2016, May 2017, and May 2018 to incorporate into the Original Permit Appeal and Renewal Permit Appeal alleged violations of the amenable cyanide permit limit.

WHEREAS ECSD has never responded to Safety-Kleen's Original Permit Appeal, its May 2012, October 2012, July 2013, August 2013, October 2014, November 2015, July 2016, May 2017 or May 2018 Permit Appeal Supplements, or Safety-Kleen's September 2013 Renewal Permit Appeal including provisions contesting the amenable cyanide limits in these Permits, and the Original Permit Appeal and Renewal Permit Appeal remained in effect until 

November 15, 2018 with respect to the amenable cyanide limit contained in the Original Permit and the Renewal Permit.

➔ **WASTEWATER DISCHARGE PERMIT MODIFICATION APPEAL AND TENTH APPEAL SUPPLEMENT**

1. As part of this Wastewater Discharge Permit Modification Appeal and Tenth Permit Appeal Supplement, Safety-Kleen hereby incorporates its Original Permit Appeal filing and its May 2012, October 2012, July 2013, August 2013 Supplements, the September 2013 Renewal Permit Appeal, the October 2014, the November 2015, July 2016, May 2017, and May 2018 Permit Appeal Supplements, thereto as if fully restated herein.

➔ 2. The Modified Permit erroneously identifies Safety-Kleen's Centralized Waste Treatment (CWT) Point Source category as the "Multiple Wastestreams" Subcategory identified in 40 CFR § 437.47. (See Modified Permit, p. 1, ii). The Multiple Wastestream Subcategory applies to any source "which combines treated or untreated wastes from Subpart A ["Metal Treatment and Recovery"], B ["Oils Treatment and Recovery"], or C ["Organics Treatment and Recovery"]." 40 CFR § 437.47(a). Processes at Safety-Kleen's East Chicago facility governed by 40 CFR § 437 are limited to Subpart B "Oil Treatment and Recovery" so reference to Subpart D, "Multiple Wastestreams" is incorrect. Although Safety-Kleen also treats waste from interior cleaning of railroad tanker cars (under 40 CFR § 442.20 *et seq.*) that wastestream is identified separately in the Modified Permit on p. 1, iii); however, this wastestream does not qualify the facility for a "Multiple Wastestreams" designation under 40 CFR § 437.40 (Subpart D). Safety-Kleen asserts that page 1, ii of the Modified Permit should be revised to reference "Subpart B – Oils Treatment and Recovery" at 40 CFR § 437.20 *et seq.*, rather than "multiple waste streams".

➔ 3. During its review of the "Transportation Equipment Cleaning" limits (40 CFR Part 442.25) prescribed in the Modified Permit, Safety Kleen reviewed the provision in 40 CFR

§ 442.25(b) allowing an industrial user to establish a “Pollutant Management Plan” (“PMP”) as an alternative to the pretreatment standards prescribed in 40 CFR § 442.25(a) (the limits also reflected on page 3 of the Modified Permit). To date, ECSD has not provided Safety-Kleen the opportunity to develop an alternative PMP. Although Safety-Kleen is not proposing the use of PMP as an alternative to specific pretreatment standards at this time, the Company would like the opportunity to evaluate the PMP option set forth in 40 CFR § 442.25(b) and potentially propose an alternative PMP to ECSD at some time in the future.

4. After calculating its allowable headworks loading for amenable cyanide, Section 6.5 of the EPA Local Limits Manual¹ states that a POTW should determine whether its local limits pass a “common sense test.” Considerations include: (a) whether the limits technologically achievable and (b) whether the limits are sensible in light of actual conditions at the treatment plan and past compliance experience. When local limits fail the common sense test, POTWs should reassess the limits development process, including through an individual control mechanism that does not result in an over-allocation of the maximum allowable industrial holding.

5. ECSD’s local limit of 0.019 mg/L for amenable cyanide does not pass the common sense test. Ninety-percent (90%) of industrial users in the ECSD discharge no detectable amounts of amenable cyanide. (ATC Memo dated June 1, 2018 included as Exhibit A). By contrast, approximately ninety-percent (90%) of the amenable cyanide discharged into the ECSD’s POTW is from Safety-Kleen. EPA Guidance discourages local limits that result in over-allocation; ECSD’s local limits currently over-allocate amenable cyanide discharge to 90% of industrial users. As has been reported to the ECSD before, Safety-Kleen has taken extensive efforts and investment, beginning in 2007, to reduce its discharge and comply with permit limits.

¹ Link to the manual for reference: https://www3.epa.gov/npdes/pubs/final_local_limits_guidance.pdf

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